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Atty. Docket No.: 0154.310US

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March 5, 2003  
MAXYGEN, INC.

By: Diane Dunn

Diane Dunn

MAR 12 2003

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Juha Punnonen, et al.

Examiner: Gerald R. Ewoldt

Art Unit: 1644

Application No.: 09/760,388

Filed: January 10, 2001

**RESPONSE TO RESTRICTION  
REQUIREMENT UNDER  
35 U.S.C. § 121**

For: **MONOCYTE-DERIVED  
DENDRITIC CELL SUBSETS**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In response to the Office Action dated February 24, 2003, Applicants respectfully request reconsideration of the above-identified application in view of the following amendments and remarks. The following document is also enclosed herewith:

- 1) Transmittal Form.

**Election/Restriction.**

Claims 1-35, 37-42, 44-68, and 70-78 are presently pending. Claims 36, 43, and 69 were previously canceled without prejudice to subsequent renewal. Applicants thank the Examiner for his acknowledgement of Applicants' response dated August 21, 2002 to the first Restriction Requirement dated March 21, 2002 and Applicants' amendment dated December 10, 2002. Applicants note that the Examiner agreed that the first Restriction Requirement was incomplete, as claims 28 and 29 were not included. To correct this insufficiency, the Examiner issued this new restriction requirement and election.

In the present Office Action, the Examiner restricted the claims under 35 U.S.C. § 121, requiring Applicants to elect one of the following claim groups for prosecution in the present application:

- I. Claims 1-29, 32, and 77, drawn to a method of producing an antigen presenting cell (APC) including a dendritic cell (DC), classified in Class 435, subclass 377.
- II. Claims 1-2, 21, 23-24, and 30-31, drawn to a method of producing a recombinant transfected APC, classified in Class 435, subclasses 91.1 and 455.
- III. Claims 33-35, 37-41, 52-59, 68, and 70-76, drawn to an APC including a DC, and a vaccine, classified in Class 435, subclass 372.
- IV. Claims 42, 44-45, and 60, drawn to a method of inducing an immune response, classified in Class 424, subclasses 278.1.
- V. Claims 46-50, drawn to a method of inducing the differentiation of T cells, classified in Class 435, subclass 347.
- VI. Claim 51, drawn to T cells, classified in Class 435, subclass 372.3.
- VII. Claims 61-67 and 78, drawn to an ex vivo method of inducing an immune response comprising antigen loading, classified in Class 424, subclass 93.71.
- VIII. Claims 61-67 and 78, drawn to an ex vivo method of inducing an immune response comprising gene therapy, classified in Class 424, subclass 93.71 and Class 514, subclass 44.

Office Action, pp. 2-3.

This restriction requirement is respectfully traversed for the following reasons. First, Applicants traverse this requirement because it restricts subject matter *within* claims, in effect, requiring that a single claim (*e.g.*, claim 1) be divided up and presented in several applications, for at least the reasons set forth by Applicants in the response to the first restriction requirement dated August 21, 2002 (*e.g.*, each of claims 1-2 21, 23-24 are restricted within Groups I and II; each of claims 61-67 and 78 are restricted within Groups VI and VII).

Second, Applicants respectfully traverse the restriction requirement because the Examiner has not established a *prima facie* case that there is a serious burden upon the Examiner

such that the present restriction of the pending claims into the eight Claim Groups is necessary, for at least the reasons set forth by Applicants in the response to the first restriction requirement dated August 21, 2002. For example, the restriction between at least Groups I, II, III, V, and VI is improper because all of these claims in these groups have the same classification (Class 435), and it has not been sufficiently shown that a search and examination of the claims of these groups would constitute a serious burden on the Examiner.

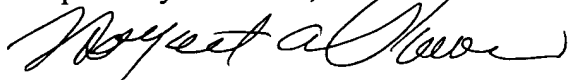
For at least the foregoing reasons, Applicants respectfully request that the restriction requirement be withdrawn.

In the event that the requirement is maintained, Applicants provisionally elect Claim Group III with traverse. Applicants expressly reserve the right to appeal this decision to the Board of Appeals and/or the federal courts in the event the restriction requirement is made final.

**Conclusion.**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this Application, please telephone the undersigned at (650) 298-5809.

Respectfully submitted,



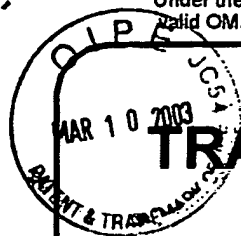
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# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/760,388	
	Filing Date	January 10, 2001
	First Named Inventor	Juha Punnonen, et al.
	Group Art Unit	1644
	Examiner Name	Gerald R. Ewoldt
Total Number of Pages in This Submission	Attorney Docket Number	0154.310US

## ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition Routing Slip (PTO/SB/69) and Accompanying Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request for Refund	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Additional Enclosure(s) (please identify below): Response to Restriction Requirement (3 pgs); and Return Postcard
<b>Authorization to Charge Deposit Account</b> Please charge Deposit Account No. 50-0990 for any additional fees associated with this paper or during the pendency of this application, including any extensions of time for consideration of the documents enclosed.		
<b>Remarks</b>		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Margaret A. Power, Reg. No. 39,804
Signature	
Date	March 5, 2003

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on this date: March 5, 2003

Typed or printed name	Diane D. Dunn		
Signature		Date	March 5, 2003